

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4342 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NEKMOHMMAD ALIAS TAPLO

HUSEINBHAI MIYANA

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE C BHATT for Petitioner

MR. NIGAM SHUKLA, Addl. G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the petitioner's detention order dated 26.4.1996 passed by the Police Commissioner, Ahmedabad City. The detention order was executed on 26.4.1996 and since then the petitioner is under detention lodged at Porbandar Jail, Dist. Junagadh.

The present Special Civil Application was filed

on 25.6.1996 and on 26.6.1996 rule returnable for 23.7.1996 was issued. So far neither any reply has been filed nor affidavit of the detaining authority has been filed.

The grounds of detention enclosed with the detention order show that there were four criminal cases registered against the petitioner under the Prohibition Act and they were pending in the court. Besides this, four criminal cases being Nos. 63 of 1996, 25 of 1996, 26 of 1996 and 27 of 1996 were also registered against the petitioner for various offences under the I.P.C. i.e. under Sections 325, 323, 504, 114 of I.P.C. and under Section 135(1) Bombay Prohibition Act and under Sections 147, 148, 149, 354, 337 of I.P.C., and under Section 135(1) Bombay Prohibition Act, 143, 147, 148, 149, 309, 188 of I.P.C. and 135(1) of Bombay Prohibition Act. In all these matters the police investigation was going on at the time when the detention order was passed and the criminal case No. 27 of 1996 under Section 395 of I.P.C. the matter is pending before the court. The detaining authority having taken note of the four criminal cases against the petitioner has mentioned about the conviction of the petitioner. Reference has also been made to the incidents with which the petitioner is concerned. The detaining authority has found that the petitioner is a bootlegger and was engaged in beating innocent persons publicly and in support of the fact that the petitioner was engaged in anti-social activities statements of four witnesses have also been considered. Since the witnesses had requested to keep their identity secret because they were frightened and afraid of the petitioner, the detaining authority has invoked Section 9(2) of the PASA Act so as to keep their identity secret. The detaining authority has also considered that it was necessary to prevent the petitioner from continuing his anti-social activities and the proceedings of externment may not be sufficient as the petitioner has become a problem to the maintenance of public order.

The detention order has been challenged on more than one grounds but at the time of arguments the learned counsel kept her arguments confined to the question that the allegations and the material relied upon by the detaining authority against the petitioner did not constitute a case of breach of public order and at the most it could be said to be a case of breach of law and order only.

I have considered the submissions made on behalf of both the sides. In view of the reasons given in the

decision dated 4.10.1996 of this court rendered in Special Civil Application No. 3879 of 1996, the allegations and material as have been relied upon in the instant case even if taken to be true cannot be said to constitute a case of breach of public order. It is at the most a case of breach of law and order for which ground the detention order could not be passed. The case is fully covered by the decision dated 4.10.1996 mentioned above and the impugned order cannot be sustained in the eye of law.

Accordingly the Special Civil Application is allowed and the impugned detention order dated 26.4.1996 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty if not required in any other case. Rule is made absolute.

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